

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO**

|                                     |   |                                |
|-------------------------------------|---|--------------------------------|
| <b>UNITED STATES OF AMERICA, et</b> | : | <b>CASE NO.: 1:02-cv-00107</b> |
| <b>al.,</b>                         | : |                                |
|                                     | : |                                |
| <b>Plaintiffs,</b>                  | : | <b>JUDGE S. ARTHUR SPIEGEL</b> |
|                                     | : | <b>MAGISTRATE HOGAN</b>        |
| <b>v.</b>                           | : |                                |
|                                     | : | <b>RESPONSE TO BROWN</b>       |
|                                     | : | <b>REQUEST FOR REVIEW</b>      |
| <b>BOARD OF HAMILTON COUNTY</b>     | : |                                |
| <b>COMMISSIONERS, et al.</b>        | : |                                |
|                                     | : |                                |
| <b>Defendants.</b>                  | : |                                |

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The City and County Defendants ("MSD") respond to Betty J. Brown's Motion for Review (Doc #177) as follows:

1. The MSD investigated Ms. Brown's claim based on the Complaint received by the Solicitor's office in January of 2007. The City of Cincinnati's Claims Administrator in 2007 was Shirley Lenzly.
2. The MSD provided their original "Complaint Form" and confirmed that the cause of the back up at 6423 Libson was "heavy roots coming out of tap." (MSD Complaint and email attached as Exhibit A).
3. The MSD confirmed that the WIB took place on December 30, 2004. (Emails attached as Exhibit A).
4. The MSD does not maintain the customer's lateral. The customer's lateral is on private property and attaches to the public sewer. In this case, the MSD did work on the lateral in the right of way, but only because the MSD was investigating the cause of the back up. (See Exhibit A). The Complaint for indicates that the house lateral ("tap") was rodded and visualized by a video

system. The complaint form indicated and the “tv” confirmed that the cause of the back up was not the main line sewer but “heavy roots” coming out of the tap. (See, Exhibit A).

5. The City’s claims administrator did not do a damage estimate because of the determination that the problem was not with the mainline sewer, but rather in the customer’s lateral.

6. Under Ohio law, claims against an Ohio political subdivision are subject to a two year statute of limitations. R.C. 2744.04. Regardless of the cause of the basement back up, Ms. Brown’s claim for damages was subject to a two-year statute of limitations under Ohio law. At the latest, Ms. Brown should have filed in either state court or in this case on or before December 30, 2006. As such, her claim is time barred.

Accordingly, the MDS defendants respectfully request that Ms. Brown’s Request for Review be denied.

**Respectfully submitted,**

**JULIA L. MCNEIL (0043535)  
City Solicitor**

/s/ Terrance A. Nestor

Terrance A. Nestor, (0065840)

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Trial attorney for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify on August 27, 2007 a true and accurate copy of the foregoing Response was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Terrance A. Nestor  
Terrance A. Nestor (0065840)  
Sr. Assistant City Solicitor